FRIEDMAN, Circuit Judge, dissenting.

I would affirm.

As I read the court's opinion, the court reverses the district's grant of summary judgment dismissing the complaint because it concludes that there are disputed factual questions that "preclude us from determining whether officers had probable cause to enter" Klapper's apartment, namely, whether police officers could see Klapper clearly before "they ordered him to open the exterior door to his apartment." It relies on *United States v. Winsor*, 846 F.2d 1569 (9th Cir. 1988), where the police, with drawn guns, knocked on the door of the defendant's hotel room and announced: "Police. Open the door." 846 F.2d at 1571. The court held that this language constituted a "command" to open the door. *Id.* at 1573.

In the present case, in contrast, I read the record as justifying the conclusion that the police "requested" rather than "demanded" that Klapper open the door. In his June 19, 2003 deposition, Klapper stated that the officers "said they were L.A.P.D., if I could open the door?" In his September 10, 2003 declaration, Klapper similarly stated that the officers "said words to the effect of 'could you open the door?" Although in his August 14, 2003 declaration, he stated that "[a]t

the direction of the police officer, I unlocked the deadbolt on the security door," he did not state the officer's words that led him to conclude that he had been "directed" to do so.

Perhaps the court is reading *Winsor* broadly to treat any police knocking on the door, accompanied by a request to open it, as a demand for such action. I do not so read *Winsor*, however, and believe that such an interpretation of that decision would be inconsistent with other decisions of this court. *See United States v. Cormier*, 220 F.3d 1103, 1109 (9th Cir. 2000) ("Because there was no police demand to open the door, and [Officer] Peters was not unreasonably persistent in her attempt to obtain access to Cormier's motel room, there is no evidence to indicate that the encounter was anything other than consensual.") (citations omitted); *Davis v. United States*, 327 F.2d 301, 303 (9th Cir. 1964) (stating that absent an order from the homeowner to the contrary, "there is no rule . . . which makes it illegal . . . for [a police officer] openly and peaceably, at high noon, to walk up the steps and knock on the front door of any man's 'castle' with the honest intent of asking questions . . .").

Although Klapper stated in his September 10 declaration that he "did not think that [he] had any choice but to unlock the dead bolt of the security door," his subjective belief is not dispositive. The test is one of "'objective' reasonableness -

- what would the typical reasonable person have understood by the exchange between the officer and the suspect?" *Florida v. Jimeno*, 500 U.S. 248, 251 (1991).

I conclude that even viewing the facts most favorably to Klapper, the officers did not violate his Fourth Amendment rights when, in response to their request, he opened the door. Under that conclusion it is immaterial whether the officers could see Klapper before he opened the door.

But even if one comes out the other way on that issue, I conclude that the officers would have qualified immunity for their actions in obtaining access to Klapper's apartment. Reasonable officers in their position would not have known or believed that their actions were unconstitutional. *See Saucier v. Katz*, 533 U.S. 194, 202 (2001).

Finally, I cannot say that the district court abused its discretion or otherwise erred in denying Klapper's motion to amend the complaint. The proposed amendment would have added another defendant and added three new legal claims against the individual defendants. The original complaint was file in April 2002. The motion to amend was field August 4, 2003, more than 30 days after the discovery cut-off date and four months before the trial date. If granted,

presumably the amendment it would have led to additional discovery, which could have delayed the proceedings significantly.